

REMARKS*1. Status of claims*

Claims 1-17 are pending.

*2. Claim rejections under 35 U.S.C. §103*

Claims 1-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Katsumoto et al., U.S. Pat. No. 6,139,770 ("Katsumoto") in view of Nordstrom, U.S. Pat. No. 3,536,687 ("Nordstrom"). Applicants respectfully traverse this rejection.

Katsumoto primarily discloses photoinitiators useful in oxygen scavenging compositions. It does not teach oxygen scavenging polymers comprising cyclic olefinic pendant groups, such as, for example, the cyclic olefinic pendant groups named in the present specification at p. 14, lines 14-30. Furthermore, the examiner has noted that "Katsumoto fails to teach the specific oxygen properties recited in the applicants' claim 1 or polymers recited there" (Paper No. 24, Office Action of August 21, 2003, Detailed Action, p. 3).

Nordstrom teaches polymers with cyclic olefinic pendant groups that oxidatively cross-link in air at ambient temperatures (col. 1, lines 50-51) to form at least partially crosslinked films when formed into an exterior coating of a material and air dried (col. 5, lines 20-72). However, simply because a polymer oxidatively cross-links in air does not mean that it reacts with oxygen at a rate sufficient to function as an oxygen-scavenging polymer. Additionally, Nordstrom does not give the skilled artisan a reasonable expectation that such polymers would function as oxygen scavengers in

a multi-layer rigid container for food or beverage packaging comprising at least an inner layer, an outer layer and a core layer between the inner layer and the outer layer, wherein the inner and outer layers are comprised of an aromatic polyester or copolyester, and wherein the core layer is comprised of

(i) an oxygen scavenging polymer comprising a polymer backbone and cyclic olefinic pendent groups covalently linked to the polymer backbone; and (ii) a transition metal catalyst, and wherein the oxygen transmission rate of the container is less than about 1.0 cc O<sub>2</sub> per square meter per day at atmospheric pressure and 25°C.

For the reasons discussed above, there is no motivation to combine the references with a reasonable expectation of success. More specifically, the skilled artisan would not have a reasonable expectation that a container formed according to the combined teachings of Katsumoto and Nordstrom would have an oxygen transmission rate of less than about 1.0 cc O<sub>2</sub> per m<sup>2</sup> per day at 1 atm and 25°C. Without the benefit of the present specification the skilled artisan could not conclude that that such a container can be readily formed (Example 2, pp. 27-29). Therefore, the references neither teach nor suggest the invention recited by the pending claims, and Applicants respectfully request this rejection be withdrawn.

### 3. Concluding remarks

Applicants respectfully submit that all pending claims 1-17 are in condition for allowance. The Examiner is invited to contact the undersigned patent agent at (713) 934-4065 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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